IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.406 OF 1985

Punjab & Sind Bank .. Plaintiffs

Vs.

M/s.Devendra Singh & Associates & Ors. .. Defendants

Mr.K.H.Mody i/b M/s.Haridas & Co. for the plaintiffs

None for the defendantss

CORAM : S.U.KAMDAR, J

DATED : 11TH JULY 2005

P.C.:

1. The present suit is filed for the recovery of sum of Rs.61,076.43 alongwith interest thereon @ 19.5% p.a. with interest at quarterly rest. Some of the material facts of the present case are briefly enumerated as under:

2. Sometime in or about 7.11.77, defendant no.2 who is the sole proprietor of defendant no.1 approached plaintiffs for the purpose of granting the said Overdraft facility and obtained Demand

Promissory Note dt.7.11.77 and defendant no.3 executed letter of guarantee dt.7.11.77. In the meantime, account of defendant no.1 became irregular and there was a balance of Rs. 33,399.37 and therefore, the plaintiffs by Advocate letter dt.24.6.81 called upon the defendants to make payments to the defendants of the outstanding amount in the said account. However, defendants failed and neglected to make the aforesaid payment. On 6.10.82 there was a due and payable of outstanding sum of Rs.42,405/- by defendants to plaintiffs and therefore defendant no.3 executed a letter of guarantee dt.6.10.82 for the said sum of Rs.42,405/- under demand promissory note and letter of continuity was also executed. Defendants also agreed to make payment of interest amount. Defendants have acknowledged their liability to pay. However, inspite of aforesaid there was a default on the part of the defendant to make payment and therefore on 10.6.83 notice was sent to the defendants asking them to make payment of the aforesaid amount. Inspite of the said notice, there was no reply from the defendants. The defendants have not paid the aforesaid amount. In

view thereof, the present suit is filed for the recovery of sum of Rs.61,076.43 along with interest @ 19.5%.

3. Defendants have filed the written statement in the present suit. The basic defence is that the documents were executed in blank. It has been further contended that on 23.4.81 a new contract was arrived at by which earlier terms and conditions of the said sanction letter were given a go by. It has been further alleged in the written statement that the suit is barred by the law of limitation. Issues were framed on 4.7.05. Plaintiffs have filed compilation of documents which is taken on record and marked Ex.P-1 collectively. An affidavit of evidence is also filed of one Mr.Rajendra Singh Mayal, the Manager of the plaintiffs corporation bank, Mumbai. Defendants though served have not been bothered to appear in the present proceedings.The evidence of the plaintiffs has gone unchallenged.

4. In view of the aforesaid, there shall be a decree in favour of the plaintiffs and against the

defendants for the sum of Rs.61,076.43 with further interest @ 18% p.a. from the date of suit till payment and / or realisation.